

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

GREGORY THOMAS BERRY, *et al.*

Plaintiffs,

Civil Action No. 3:11cv754

v.

LEXISNEXIS RISK & INFORMATION  
ANALYTICS GROUP, INC., *et al.*

Defendants.

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF CONSENT MOTION  
TO FILE AMENDED COMPLAINT**

COME NOW the Plaintiffs, Gregory Thomas Berry, Summer Darbonne, Rickey Millen, Shamoon Saeed, Arthur B. Hernandez, Erika A. Godfrey and Timothy Otten ("Plaintiffs"), individually and on behalf of all others similarly situated and in support of their Motion to Amend Complaint, they state:

The Parties have also moved to allow the filing of Plaintiffs' proposed Amended Complaint. (Exhibit "A"). By doing so, they focus the allegations on those claims that remain and are now the focus and basis of this action. Obviously, Plaintiffs also include an explicit statement of the basis for the injunctive relief to be obtained in this case. The Amended Complaint further removes allegations no longer at issue in the case and corrects the class definitions to conform to the time period addressed in settlement.

Pursuant to Fed. R. Civ. P. 15(a)(2), Plaintiffs asks for leave to file the proffered Amended Class Complaint. Defendants have consented. No party, and no class member, will be prejudiced by the amendment. Instead, the amendment simply adapts the existing set of allegations to more clearly state the nature of claims and remedies pursued in the case and now

settled on a class basis.<sup>1</sup>

The present motion is filed out of an abundance of caution, given the asserted objections. Plaintiffs are confident that the issue in dispute – whether or not the complaint explicitly identifies each available remedy sought – such as injunctive relief – is immaterial. Rule 54(c) states:

(c) Demand for Judgment; Relief to Be Granted. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

Fed. R. Civ. P. 54(c). Nevertheless and though no change is made to the relief actually pursued in the case since before filing, “A Rule 15(a) amendment also is appropriate for increasing the amount of damages sought, or for electing a different remedy than the one originally requested. Technically, these amendments are not necessary since Rule 54(c) provides that regardless of the formal demand for relief, “the final judgment should grant the relief to which each party is entitled ....” A party desiring to change the demand for relief may do so under Rule 15(a),

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<sup>1</sup> There are no prejudicial timing issues. The rights and interests of the Parties and the Class

Quite appropriately the courts have not imposed any arbitrary timing restrictions on requests for leave to amend and permission has been granted under Rule 15(a) at various stages of the litigation. These include: following discovery; after a pretrial conference; at a hearing on a motion to dismiss or for summary judgment; when the case is on the trial calendar and has been set for a hearing by the district court; at the beginning, during, and at the close of trial; after a judgment has been entered; and even on remand following an appeal.

The policy of allowing amendments to be made at any time during the litigation is sound. It would be unreasonable to restrict a party's ability to amend to a particular stage of the action inasmuch as the need to amend may not appear until after discovery has been completed or testimony has been taken at trial.

however.” 6 Fed. Prac. & Proc. Civ. § 1474 (3d ed.).

Plaintiffs’ motion is consistent with the procedures followed by class action parties and courts across the nation, including in this District and Division. *See e.g. Beverly v. Wal-Mart Stores, Inc. et al*, 3:07-cv-469 (E.D.V.A. May 1, 2009)(R. Williams)(Exhibit “B”).

Respectfully submitted,  
**PLAINTIFFS**

/s/  
\_\_\_\_\_  
Leonard A. Bennett, VSB No. 37523  
Susan M. Rotkis, VSB No. 40693  
CONSUMER LITIGATION  
ASSOCIATES, P.C.  
763 J. Clyde Morris Boulevard, Suite 1-A  
Newport News, Virginia 23601  
Tel: (757) 930-3660  
Fax: (757) 930-3662  
lenbennett@clalegal.com  
srotkis@clalegal.com

Matthew J. Erasquin, VSB No. 65434  
Janelle Mason Mikac, VSB No. 82389  
CONSUMER LITIGATION  
ASSOCIATES, P.C.  
1800 Diagonal Road, Suite 600  
Alexandria, VA 22314  
Tel: (703) 273-7770  
Fax: (888) 892-3512  
matt@clalegal.com  
janelle@clalegal.com

Michael A. Caddell  
CADDELL & CHAPMAN  
1331 Lamar, Suite 1070  
Houston, TX 77010

James A. Francis  
FRANCIS & MAILMAN  
Land Title Building, 19th Floor  
100 South Broad Street

Philadelphia, PA 19110

Dale W. Pittman, VSB No. 15673  
THE LAW OFFICE OF DALE W.  
PITTMAN, P.C.  
The Eliza Spotswood House  
112-A West Tabb Street  
Petersburg, VA 23803-3212  
Tel: (804) 861-6000  
Fax: (804) 861-3368  
dale@pittmanlawoffice.com

*Counsel for Plaintiffs Gregory Thomas Berry,  
Summer Darbonne, Rickey Millen, Shamoon  
Saeed, Arthur B. Hernandez, Erika A. Godfrey  
and Timothy Otten*

**CERTIFICATE OF SERVICE**

I certify that on the 10th day of December, 2013, I electronically filed the foregoing Plaintiffs' Memorandum in Support of Motion to Amend Complaint with the Clerk of Courts using the CM/ECF system, which will send notification of such filing to CM/ECF participants, and I hereby certify that I have mailed by United States Postal Service the document to the non-CM/ECF participants:

Leonard A. Bennett  
Susan M. Rotkis  
Consumer Litigation Associates, P.C.  
763 J. Clyde Morris Boulevard, Suite 1A  
Newport News, Virginia 23601  
Telephone: 757-930-3660  
Facsimile: 757-930-3662  
Email: lenbennett@clalegal.com  
Emails: srotkis@clalegal.com  
*Counsel for Plaintiffs*

Michael A. Caddell  
Cynthia B. Chapman  
Craig C. Marchinado  
Caddell & Chapman  
1331 Lamar St., Suite 1070  
Houston, TX 77010  
Telephone: 713-751-0400  
Facsimile: 713-751-0906  
Email: mac@caddellchapman.com  
Email: cbc@caddellchapman.com  
Email: ccm@caddellchapman.com  
*Counsel for Plaintiffs*

James Arthur Francis  
David A. Searles  
Erin A. Novak  
John Soumilas  
Francis & Mailman PC  
Land Title Building  
100 S Broad Street 19th Floor  
Philadelphia, PA 19110  
Telephone: 215-735-8600  
Facsimile: 215-940-8000  
Email: jfrancis@consumerlawfirm.com  
Email: dsearles@consumerlawfirm.com  
Email: enovak@consumerlawfirm.com  
Email: jsoumilas@consumerlawfirm.com  
*Counsel for Plaintiffs*

Dale Wood Pittman  
The Law Office of Dale W. Pittman, P.C.  
The Eliza Spotswood House  
112-A W Tabb St.  
Petersburg, VA 23803-3212  
Telephone: 804-861-6000  
Facsimile: 804-861-3368  
Email: dale@pittmanlawoffice.com  
*Counsel for Plaintiffs*

David Neal Anthony  
TROUTMAN SANDERS LLP  
Troutman Sanders Bldg  
1001 Haxall Point  
P.O. Box 1122  
Richmond, VA 23219  
(804) 697-5410  
david.anthony@troutmansanders.com  
*Counsel for Defendant Reed Elsevier Inc.,  
LexisNexis Risk Solutions FL Inc. and  
LexisNexis Risk Data Management, Inc.*

Janelle Mason Mikac  
Consumer Litigation Associates PC (Alex)  
1800 Diagonal Rd., Suite 600  
Alexandria, VA 22314  
Telephone: 703-273-7770  
Facsimile: 888-892-3512  
Email: janelle@clalegal.com  
*Counsel for Plaintiffs*

William Paul Ferranti (*Pro Hac Vice*)  
Winston & Strawn LLP (IL-NA)  
35 W. Wacker Dr.  
Chicago, IL 60601-9703  
*Attorneys for Megan Christina Aaron, et al.*

Jeanne Giles  
260 Gooseberry Drive  
Reno, NV 89523  
*Pro Se*

Charles Bennett Molster, III  
Winston & Strawn LLP  
1700 K St. NW  
Washington, DC 20006

Adam E. Schulman  
Center for Class Action Fairness  
1718 M. Street NW #236  
Washington, DC 20036  
*Pro Se*

Kimball Richard Anderson (*Pro Hac Vice*)  
Winston & Strawn LLP (IL-NA)  
35 W. Wacker Dr.  
Chicago, IL 60601-9703

David Brown  
1717 Market Street  
Tacoma, WA 98402  
*Pro Se*

Samuel Issacharoff (*Pro Hac Vice*)  
40 Washington Square South  
411J  
New York, NY 10012

Ronald I. Raether, Jr. (*Pro Hac Vice*)  
FARUKI IRELAND & COX. P.L.L.  
500 Courthouse Plaza, S.W.  
10 North Ludlow Street  
Dayton, OH 45402  
Telephone: 937.227.3733  
Telecopier: 937.227.3717  
Email: rraether@ficlaw.com

*Counsel for Defendant Reed Elsevier Inc., LexisNexis Risk Solutions FL Inc. and LexisNexis Risk Data Management, Inc.*

James F. McCabe (*Pro Hac Vice*)  
MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, CA 94105  
Telephone: 415.268.7000  
Facsimile: 415.268.7522  
Email: jmcabec@mofo.com

*Counsel for Defendant Reed Elsevier Inc., LexisNexis Risk Solutions FL Inc. and LexisNexis Risk Data Management, Inc.*

William Paul Ferranti (*Pro Hac Vice*)  
Winston & Strawn LLP (IL-NA)  
35 W. Wacker Dr.  
Chicago, IL 60601-9703  
*Counsel for Megan Christina Aaron, et al.*

/s/Leonard A. Bennett  
Leonard A. Bennett  
Virginia State Bar No. 37523  
*Counsel for Plaintiffs*  
CONSUMER LITIGATION ASSOCIATES, P.C.  
763 J. Clyde Morris Boulevard, Suite 1A  
Newport News, Virginia 23601  
Telephone: 757-930-3660  
Facsimile: 757-930-3662  
Email: lenbennett@clalegal.com